

August 15, 1996

Mr. William F. Caton, Acting Secretary
Office of Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: Michigan Public Service Commission Comments FCC 96-308

RECEIVED

AUG 15 1996

In the Matter of)

Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended;)

and)

Regulatory Treatment of LEC Provision)
of Interexchange Services Originating in the)
LEC's Local Exchange Area)

CC Docket No. 96-149

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton :

Enclosed is an original and 11 copies of the Comments of the Michigan Public Service Commission Staff regarding the above captioned Notice of Proposed Rulemaking.

Sincerely,

William J. Celio/aks

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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TO: THE COMMISSION

COMMENTS OF THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF

August 15, 1996

Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48910

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Michigan Public Service Commission Staff
August 15, 1996

I. INTRODUCTION and SUMMARY

The Staff of the Michigan Public Service Commission (MPSC Staff) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) in CC Docket No. 96-149. This Notice considers Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the "Telecommunications Act of 1934 as amended" (FTA), and Regulatory Treatment LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area.

The MPSC Staff comments in this matter are limited to requesting the Federal Communications Commission's (FCC) interpretation of whether or not a separate subsidiary, being established pursuant to the provisions of Section 272 of the FTA to provide in-region interLATA services, may also offer basic local exchange services through this same subsidiary. These comments address that single issue, which is raised in paragraphs 5, 6, 33, 70, 91 and 92 of the NPRM, and to the appropriate regulation of local and access services should the newly created subsidiary offer such services. The MPSC Staff does not, in this filing, make a recommendation to the FCC as to the correct interpretation of the FTA with regard to this issue.

II. BACKGROUND

On March 1, 1996, Ameritech Communications, Inc. (ACI), a fully owned subsidiary of Ameritech Corporation, filed an application with the Michigan Public Service Commission, in Case No. U-11053, for a license to provide basic local exchange service in all Michigan Bell Telephone and GTE exchanges in Michigan. Michigan Bell Telephone Company¹ is also a fully owned subsidiary of Ameritech Corporation, and already possesses a license to provide basic local exchange services in the vast majority of ACI's proposed service territory. Pursuant to the FTA, Michigan Bell Telephone Company is defined to be a "Bell operating company" and as such may apply to the FCC for permission to provide interLATA long distance services and other services it is presently prohibited from offering. According to the FTA, Michigan Bell Telephone must first prove to the FCC that it is providing or generally offering access and interconnection that meet the requirements of a competitive checklist delineated in FTA, § 271. In addition, FTA, § 272 specifies that if Michigan Bell Telephone is granted permission to offer in-region interLATA services, it may only do so through a separate subsidiary. According to ACI's license application, ACI is the separate subsidiary

¹MPSC Staff will use the names "Michigan Bell Telephone Company," "Michigan Bell Telephone" and "Ameritech Michigan" interchangeably in this document.

created for the purpose of complying with § 272.

Under circumstances listed in § 272(g) of the FTA, Michigan Bell Telephone and its interLATA subsidiary may jointly market local exchange and interLATA services. However, in its license application, ACI proposes to directly offer both local and interLATA toll services rather than jointly market the local services of Michigan Bell Telephone with the interLATA toll services of ACI.

Michigan, as well as other state jurisdictions are proceeding to process license applications such as ACI's, under the terms of their respective state statutes regarding the provisioning of basic local exchange services. The MPSC is nearing completion of this proceeding, and is in fact required by state law to issue a decision regarding the licensing of ACI no later than August 28, 1996.

As discussed below, many items in the FCC's NPRM suggest that under federal law a determination may be reached that the subsidiary created for the purposes of providing interLATA services may not also provide basic local exchange service, either through facilities owned directly by the newly created subsidiary or on the basis of reselling the basic local exchange services of its affiliate, Michigan Bell Telephone. If in the opinion of the FCC, the FTA prohibits provisioning of both basic local exchange services and interLATA toll services from the same newly created subsidiary, an FCC ruling to that effect is needed immediately.

III. MPSC STAFF REQUESTS CLARIFICATION REGARDING PARAGRAPHS 5, 6,
33, 70, 91 and 92

The MPSC Staff seeks clarification of questions raised by the FCC in paragraphs 5, 6, 33, 70, 91 and 92 of the NPRM, along with accompanying footnotes. These paragraphs raise a question as to whether the FCC interprets the FTA to allow basic local exchange services and interLATA services to be provided through the same subsidiary of a Bell operating company.

The MPSC Staff seeks clarification regarding the ability of Michigan Bell Telephone to offer basic local exchange services and interLATA services through joint marketing efforts vs. integrated marketing, i.e., the question of how "one stop shopping" is available to the Bell operating companies.

The NPRM addresses the overall question of joint marketing in several instances. At ¶ 3, the FCC indicates this NPRM was adopted in order to

"adopt safeguards to govern the BOCs' entry into certain new markets . . . (T)hese safeguards are intended both to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive services, such as interLATA services and equipment manufacturing, and to protect competition in those markets from the BOCs' ability to use their existing market power in local exchange services to obtain an anticompetitive advantage in those new markets the BOCs seek to enter."

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A similar discussion appears in ¶ 5 of the NPRM. The FCC continues at ¶ 6 of the NPRM, discussing the advantages that competition may offer including the "one stop shopping" potential. The MPSC Staff seeks clarification of whether the "one stop shopping" from a single provider (as discussed in ¶ 6) envisions integrated marketing where both local and toll services are provided from the same subsidiary of the single provider, or whether the FCC interprets the FTA as permitting only joint marketing, where two separate subsidiaries are required to offer the local and interLATA toll services.

Later discussion in the NPRM appears to suggest that under the FTA a Bell operating company, such as Michigan Bell Telephone, may choose to offer its manufacturing, interLATA telecommunications services and interLATA information service in some combination in a single separate affiliate. However, the NPRM continues stating, "If a BOC places its local exchange operations in a separate affiliate, pursuant to section 272(a)(1), the local exchange affiliate must be separate from the BOC affiliate or affiliates engaged in covered competitive activities." NPRM, ¶ 33, (and also footnotes 64 and 65).

If the FTA and the FCC require that basic local exchange services and interLATA services are to be offered in subsidiaries separate from each other, the MPSC Staff urges the FCC to immediately provide direction in this regard.

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At ¶ 92 the FCC questions, "whether, instead of allowing BOC personnel to market its affiliate's services at arm's length, it is necessary to require a BOC and its affiliate to jointly contract to an outside marketing entity for joint marketing of interLATA and local exchange services in order to comply with the provisions of section 272(b)(3)." Does this question envision that the new interLATA subsidiary is prohibited from directly offering local services?

Similarly, at ¶ 91 of the NPRM, when discussing advertising, the FCC seeks comment, "on whether these sections encompass such prohibitions as, for example, advertising the availability of interLATA services combined with local exchange services, making these services available from a single source, or providing bundling discounts for the purchase of both services." Again, this reference seems to suggest the FCC envisions interLATA and basic local exchange services being provisioned from two separate subsidiaries.

The NPRM discusses at ¶ 70 that the non discrimination requirements of Sec. 272(c)(1) do not apply to the BOC affiliates. Again, the further issue is raised as to the intent of federal law. Does the FTA envision that both local and toll services may be provided by the same newly created subsidiary when the requirements of non discrimination applicable to a Bell operating company will not apply.

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Finally, although Section VIII of the FCC's NPRM solicits comments on the proposed regulatory classification for Bell operating company provisioning of interLATA services, nothing in the NPRM addresses the regulatory classification of local access services if provided by the newly created subsidiary. Is it again envisioned that all local and local access services will continue to be provided by the existing subsidiary or may these services be offered both by the existing subsidiary and the newly created interLATA subsidiary.

IV. CONCLUSION

ACI has proposed, in MPSC Case No. U-11053, to be licensed as a provider of basic local exchange services so that it may offer both its local service and interLATA toll offerings from the same subsidiary; a subsidiary which was created to fulfill the obligations of Section 272 of the FTA. As discussed above, it is not clear whether federal law and/or regulations will permit the provisioning of both local and interLATA toll services from the ACI subsidiary. The MPSC Staff in this filing, takes no position as to the correct interpretation of the FTA but requests that the FCC make a specific determination as to whether the provision of both basic local exchange services and interLATA services from a newly created Bell operating company separate subsidiary is

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permissible under the FTA.

Respectfully submitted,

A handwritten signature in cursive script that reads "William J. Celio".

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